

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KIMBERLY PASSANANTI, }
Plaintiff, }
-vs- }
THE COUNTY OF COOK, ILLINOIS, }
a unit of local Government, }
COOK COUNTY SHERIFF'S }
DEPARTMENT, JOHN P. SULLIVAN, }
in his individual capacity, }
Defendants. }

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN W. DARRAH

APPEARANCES:

For the Plaintiff: ANDREOU & CASSON, LTD.
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For the Defendants: COOK COUNTY
STATE'S ATTORNEY'S OFFICE
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(Proceedings in open court:)

THE COURT: 08 C 2803. We're in the courtroom obviously. No one else is present except counsel.

Do you want to identify yourselves for the record,
please?

MR. CASSON: Luke Casson for plaintiff, Judge.

MR. HALLSTEN: Donald Hallsten and Jamieson Bowman on behalf of the defendants, your Honor.

THE COURT: Good afternoon all.

MR. CASSON: Good afternoon.

THE COURT: First order of business, defendant has filed a motion styled a motion to compel and for other relief. The defendant filed an answer pointing out that there are some problems with the motion, including the failure to observe local rules regarding meeting and conferring as to any discovery disputes.

The matter focuses on the fact that interrogatories were not timely answered. It appears that the defendant put them in the mail on the day they were due, and so they weren't received until two days later.

MR. CASSON: Yes, your Honor.

THE COURT: But the motion doesn't show, other than some general conclusions, about how much prejudice was incurred by the plaintiff, cites no authority.

The reply to the defendants' response recites that

1 the motion is going to be converted into a rule to show
2 cause. And, again, the defendant responds that there hasn't
3 been compliance with the local rule, including local
4 Rule 16.1.

5 There really is no actual prejudice shown or
6 alleged, for that matter. And so the motion as it was
7 originally styled, a motion to compel, is denied.

8 And the motion to convert the motion to compel to
9 motion for rule to show cause is also denied.

10 I have the final pretrial order, and the pretrial
11 order sets out certain exhibits that were offered by the
12 plaintiff and objected to their receipt in evidence by the
13 defendant.

14 I'm looking at Page 4 of the proposed pretrial
15 order and there's no -- you don't set out any basis for your
16 objection.

17 MR. HALLSTEN: I want to make sure we're on the
18 same page, your Honor. My Page 4 of the pretrial order is
19 defendants' contested facts. Are we in exhibits, your Honor?

20 THE COURT: Yes.

21 MR. HALLSTEN: Okay.

22 THE COURT: (2)(c)(1) at the bottom of page --
23 there appears to be --

24 MR. HALLSTEN: Any exhibit listed that doesn't have
25 an objection, your Honor, is not objected to.

1 THE COURT: Well, I don't see -- I'm not trying to
2 be difficult, but I don't see any objection to anything under
3 2)(c)(1).

4 MR. HALLSTEN: I believe that, your Honor, you may
5 have a prior version of the pretrial order.

6 THE COURT: Well, I only have one version.

7 MR. CASSON: Your Honor, if I may, most of the --
8 I've got an extra copy for you. What was sent -- to fill
9 your Honor in, there was a -- the plaintiff filed the
10 pretrial order. Defense provided some changes yesterday,
11 which we incorporated --

12 THE COURT: Why don't you hand that up, Mr. Casson,
13 if you would.

14 (Document tendered.)

15 MR. HALLSTEN: Did you electronically file the
16 pretrial order?

17 MR. CASSON: No.

18 MR. HALLSTEN: Okay. It's on Page 6, your Honor, I
19 believe.

20 THE COURT: Okay. I see it now, and I see your
21 objections, Counsel.

22 It's going to be the ruling of the Court that all
23 objections must be made at the time of trial. If an
24 objection is not made when an exhibit is first introduced, I
25 will deem the exhibit to be admitted without objection.

1 No exhibit will be deemed admitted unless it is
2 specifically referred to in the courtroom and by exhibit
3 number and in front of the jury.

4 So the exhibits that are shown as offered in the
5 pretrial order and the objections that are made to some of
6 them are not in evidence unless they are offered at the time
7 of trial and objected to at the time of trial. Fair enough?

8 MR. HALLSTEN: Yes, your Honor.

9 MR. CASSON: Fair enough.

10 THE COURT: Okay. I take it there's no depositions
11 that will be read into evidence?

12 MR. CASSON: There won't, your Honor. I don't
13 intend to use any except for the purpose of impeachment.

14 MR. HALLSTEN: Same here, your Honor.

15 THE COURT: Okay. And you estimate the trial will
16 take five days?

17 MR. CASSON: That's correct. That's an outside
18 guess, your Honor. I'm trimming down my end. I've trimmed
19 down four witnesses today. I may get done in three, which
20 raises the issue, when will we start and when will we --

21 THE COURT: We can talk about that informally in
22 just a moment, Mr. Casson. Don't forget your question.

23 The Federal Rules, as you know, require a jury to
24 be composed of at least six people, but if we impanel more
25 than six people, those people can all deliberate. So if we

1 impanel eight, they can deliberate. We can still leave two
2 jurors and have a validly constituted jury. We'll talk about
3 my procedure regarding the voir dire system.

4 I also looked at your questions; some of them I'm
5 not going to ask. Do you enjoy your working environment, do
6 you believe an employee has the right to bring a suit, all
7 those sort of things -- I don't really believe that they go
8 to the jury's ability to be fair and impartial. I will
9 inquire generally if there's anything about this case or the
10 nature of the case that would affect their ability to be fair
11 and impartial.

12 I'll try to ask these questions that you've set out
13 here, both sides. If there's a question that I haven't asked
14 that you want me to ask because you don't want it to be
15 attributed to your side, write the question out for me and
16 I'll ask it.

17 Are there any motions in limine?

18 MR. HALLSTEN: Yes, your Honor. You may have
19 noticed, your Honor, that the defendant didn't propose any
20 additional voir dire questions. It's because the plaintiff's
21 list was all encompassing.

22 I just would like to point out that I think for
23 both parties, question No. 5 regarding whether or not
24 relatives have been employees of the county or a municipal
25 organization, would be one that I would ask the Court to ask.

1 THE COURT: I will.

2 It's my standard voir dire to try to inquire if
3 there's any connection between any of the jurors and any of
4 the parties to this suit, the attorneys or any of the
5 witnesses. I will be extremely comprehensive in that regard.

6 MR. HALLSTEN: Yes, there are motions in limine,
7 your Honor.

8 THE COURT: Okay. So I have signed the final
9 pretrial order.

10 We'll take the defendants' because there's only
11 one. What's your response to that, Mr. Casson?

12 MR. CASSON: It's not the case, your Honor. The
13 documents that were attached --

14 THE COURT: Wait. Their objection is, it's not
15 been alleged in the complaint. You say it has been alleged
16 in the complaint?

17 MR. CASSON: The way I'm reading it, it wasn't in
18 the EEOC charge and the complaint.

19 THE COURT: (Reading:) States as follows: One, in
20 her complaint plaintiff has not alleged a failure to promote,
21 end quote.

22 MR. CASSON: Our position is we have, in fact, done
23 that.

24 THE COURT: Can you read that provision to me,
25 please? I have the complaint in front of me. Just tell me

1 the page and the allegation.

2 The parties have stipulated, have they not, that
3 the termination was an adverse employment action?

4 MR. CASSON: Defendant has not stipulated to that.

5 THE COURT: Okay. Tell me what allegation raises
6 the failure to promote.

7 MR. CASSON: 28, your Honor. It doesn't
8 specifically say failure to --

9 THE COURT: Allegation 28 in Count 2 says, "The
10 actions of defendants as perpetrated by its agents and as
11 described and complained of above, are unlawful employment
12 practices in that they likely have the effect of
13 discriminating against, depriving and tending to deprive
14 equal employment to, and otherwise adversely affecting
15 plaintiffs because of their sex."

16 Where does it say failure to promote?

17 MR. CASSON: Again, your Honor, it doesn't
18 specifically say. It's a general allegation.

19 THE COURT: Well, is there anything in the
20 preceding 26 paragraphs -- or 27 paragraphs that specifically
21 says failure to promote is grounds for recovery?

22 MR. CASSON: It does not specifically say that,
23 your Honor. We believe that because of the way the discovery
24 has evolved --

25 THE COURT: That motion is granted.

1 There's also an assertion that this claim wasn't
2 made before the EEOC.

3 MR. CASSON: That was -- we deny that, your Honor.

4 THE COURT: Do you have a copy of the EEOC
5 complaint?

6 MR. CASSON: Yes.

7 THE COURT: Can you show that to me?

8 (Document tendered.)

9 THE COURT: It says, quote, I have been subjected
10 to harassment and different terms and conditions based on my
11 sex, female, for a number of years. In July of 2006 I became
12 acting director. The different terms and conditions
13 continued from July 2006 through the date of my layoff, in
14 March 2007. On March 3rd, 2007, I was notified that my
15 position was being eliminated. On my last day of work,
16 March 16th -- my last day of work was March 16th. I later
17 learned the position was filled by a male. Other respondent
18 employees who were laid off were placed in alternate
19 positions. I was the only laid-off employee that was not
20 placed in an alternate position, end quote.

21 When was this filed?

22 MR. CASSON: I believe it was in March of 2007,
23 your Honor.

24 MR. HALLSTEN: The first day of May, 2007. It's on
25 the second page, your Honor.

1 THE COURT: What's the limitation period for claims
2 before the EEOC?

3 MR. HALLSTEN: 300 days, your Honor.

4 THE COURT: 300 days.

5 This doesn't say anything about failure to be
6 promoted.

7 MR. CASSON: There were two charges, your Honor,
8 two charge sheets.

9 THE COURT: The second one talks about that?

10 MR. CASSON: Yes. It was on May 2nd.

11 THE COURT: I have three pieces of paper here.
12 Where does it say -- where is the second charge?

13 MR. CASSON: The second charge is --

14 THE COURT: What did you say to me, Mr. Casson?
15 There's another charge here that I'm not reading?

16 MR. CASSON: There were two charges incorporated on
17 the same number.

18 THE COURT: Did I just read the entire charge?

19 MR. CASSON: No. There was a second -- there was a
20 second sheet of paper --

21 THE COURT: Got it. It says, see attached.

22 MR. CASSON: And the bill of particulars -- there's
23 a statement of particulars --

24 THE COURT: So it's the bill of particulars that
25 it's your theory contains the failure to promote?

1 MR. CASSON: Yes. That's what was sent to the
2 EEOC.

3 THE COURT: Okay. It says, I was hired on
4 June 27th, 1994. Quote, my most recent position was acting
5 director of day reporting in the department of community
6 supervision and intervention. I previously filed a charge of
7 discrimination against respondent. I subsequently learned
8 that my position was filled by a male after being advised
9 that it was being eliminated, and the position of director
10 was also filled by a male after I submitted my resume for
11 consideration of that position. I was terminated in favor of
12 males and retention and promotion. Both the deputy director
13 and director positions were less qualified.

14 Trouble is, you didn't plead this in your
15 complaint. I'm going to grant the motion. It's clear the
16 theory you set out in your complaint is the termination, Mr.
17 Casson.

18 MR. CASSON: Your Honor, we would move to amend the
19 complaint to conform with the proofs.

20 THE COURT: There's no proofs yet. We haven't
21 started any trial.

22 MR. CASSON: We will have that evidence, your
23 Honor.

24 THE COURT: That motion -- will there be an
25 objection to that?

1 MR. HALLSTEN: To the amending --

2 THE COURT: Here's the thing: The defense is
3 objecting to any evidence, so as soon as you attempt to put
4 in any evidence -- I have granted the motion in limine. That
5 motion will be -- the objection at trial will be granted and
6 you won't be able to put in any evidence. So there will be
7 nothing to amend -- to conform -- there will be no proofs to
8 amend the pleadings to conform to.

9 MR. CASSON: I understand that, your Honor.

10 What I want to advise the Court of, what I would
11 like to be able to do is simply secure the record, make the
12 proffer outside the hearing of the jury --

13 THE COURT: That's already been done. Federal Rule
14 of Evidence 103 doesn't require that any more.

15 103(2) says, in pertinent part, once the Court
16 makes a definitive ruling on the record admitting or
17 excluding evidence, either at or before trial, a party need
18 not renew an objection or offer of proof to preserve a claim
19 for error.

20 The pleadings do not plead a claim of
21 discrimination based on failure to promote. Therefore, I am
22 granting the motion.

23 Motion in limine to bar the testimony of Edward
24 Healy and Zelda Whittler and Rosemarie Nolan. Do you want to
25 respond to that, Counsel?

1 MR. HALLSTEN: Yes, your Honor.

2 With regard to Zelda Whittler, the plaintiff did
3 attempt to notice her for a deposition. It's very clear that
4 the plaintiff was aware of her as a witness. We moved to
5 quash on several of the executive staff depositions but Mr.
6 Casson did not pursue the claim against Ms. Whittler; he only
7 pursued his claim against Mr. Townes and Mr. Dart.
8 Therefore, plaintiff had ample notice of Ms. Whittler's
9 identity as a witness.

10 Second, Ed Healy was the head of OPR at the time of
11 one of the investigations in this case. In plaintiff's
12 exhibits that he has presented to this Court, Ed Healy's name
13 is listed as director at the top of the report.

14 And Mr. Casson, in fact, had conversations with my
15 colleague, Mr. Bowman, about possibly deposing Mr. Healy
16 during the course of the discovery and he decided not to
17 follow up on that. So Mr. Casson had ample notice that Mr.
18 Healy was, in fact, a potential witness in this case.

19 And lastly, Rosemarie Nolan is listed on
20 Plaintiff's 26(a) as a potential witness. We did answer in
21 our requests to admit that Ms. Nolan could testify regarding
22 the qualifications of the director of day reporting. That
23 issue has been made slightly moot by the Court's ruling on
24 the defendants' motion in limine No. 1, that there's no
25 failure to promote allegation in this case.

1 And that -- I won't --

2 THE COURT: Let's take Nolan first. That will be
3 the easiest one.

4 Mr. Casson, you say the defendants have never
5 offered Ms. Nolan as a witness with knowledge of any subject
6 matter relevant to this matter. The defendants have just
7 represented that Ms. Nolan was listed on your discovery and
8 the defendants answered that she was a person with knowledge.

9 MR. CASSON: She was listed on my 26(a). She was
10 -- they were listed on their 26(a) --

11 THE COURT: They were listed -- stay with this.
12 They were listed on your 26(a) and they agreed she had
13 knowledge. Now, what basis would you have for excluding her
14 as a witness?

15 MR. CASSON: Because I don't know what -- for what
16 purpose she's being offered by the defendants.

17 THE COURT: Did you attempt to depose her?

18 MR. CASSON: I did.

19 THE COURT: Well, do they have to tell you why they
20 are going to offer a witness?

21 MR. CASSON: Your Honor, they cancelled the
22 depositions consistently across --

23 THE COURT: Hold it. One issue at a time, Mr.
24 Casson.

25 You just told me that you object to her being

1 called because you don't know what they are going to ask her.

2 MR. CASSON: Correct.

3 THE COURT: Is there a rule of discovery or rule of
4 evidence that requires they tell you in advance what they are
5 going to ask a witness before they are permitted to call a
6 witness?

7 MR. CASSON: No. That's not my objection.

8 THE COURT: Then what's the next objection?

9 MR. CASSON: My objection is, they were not
10 disclosed in the 26(a) of defendant.

11 THE COURT: But you certainly were aware of her and
12 her qualifications because you listed her and they agreed
13 with you. Now, wouldn't it be a needless act to have them
14 say the same thing back to you?

15 MR. CASSON: No, I don't think so.

16 THE COURT: Okay. Is there any other basis?

17 MR. CASSON: Yes, your Honor. On multiple
18 occasions I did, in fact, notice her for deposition. They
19 were continuously cancelled by the defendants and --

20 THE COURT: Is that true, Counsel?

21 MR. BOWMAN: Your Honor, Jamieson Bowman, Assistant
22 State's Attorney.

23 Ms. Nolan was noticed several times, but Mr. Casson
24 and I had conversations following the deposition of Alexis
25 Herrera, that he did not believe that she was necessary as a

1 witness following Ms. Herrera's testimony.

2 THE COURT: Did you ever bring a motion to compel,
3 Mr. Casson, to produce her for deposition?

4 MR. CASSON: No, I did not.

5 THE COURT: Okay. Then the motion is denied as to
6 Ms. Nolan.

7 Okay. Defendants list both Edward Healy and Zelda
8 Whittler as trial witnesses. Edward Healy is not, in fact,
9 listed as a person with knowledge in defendants' Rule 26(a)
10 disclosure.

11 Do you want to respond to that, Counsel?

12 MR. HALLSTEN: Yes, your Honor.

13 To the extent that the defendants would be required
14 to identify every possible person that would rebut some claim
15 that plaintiff may or may not make -- the defendants claim
16 that they cannot identify those people. However, with regard
17 to Mr. Healy, Mr. Healy's name is all over the documents,
18 he's the head of the person -- the organization that
19 investigated plaintiff in this case, and Mr. Casson and
20 Mr. Bowman had conversations on whether or not they would
21 notice up Mr. Healy for deposition.

22 Mr. --

23 THE COURT: Do you want to speak to that, Mr.
24 Bowman?

25 MR. BOWMAN: Yes, Judge. We did have multiple

1 conversations regarding that.

2 More importantly, Mr. Healy's name had come up in
3 at least two depositions that Mr. Casson had taken. He's a
4 rebuttal witness with regard to -- and I believe there are
5 going to be conversations by witnesses about things that he
6 may have said.

7 And so, Mr. Casson has been on notice on Mr. Healy

8 --

9 THE COURT: Do you want to speak to that, Mr.
10 Casson?

11 MR. CASSON: Your Honor, that, in fact, is not the
12 case. His name had not come up as a substantive witness as
13 to any fact that's relevant in the case.

14 THE COURT: If they produce transcript of a
15 deposition that belies that, Mr. Casson, I would be amenable
16 to a motion for sanctions. Are you representing to me that
17 what he just said to me is absolutely false?

18 MR. CASSON: No. I'm saying there's another side
19 to the story, your Honor.

20 THE COURT: That's not what you just said a moment
21 ago.

22 Would you read back -- while she's finding it,
23 we're off the record.

24 (Discussion had off the record.)

25 (Record read.)

1 THE COURT: Will you produce for me from the
2 deposition, when you get time, something that you think
3 rebuts what he just said?

4 MR. CASSON: Yes.

5 THE COURT: I've been at this a long time. Off the
6 record.

7 (Discussion had off the record.)

8 THE COURT: Go ahead.

9 MR. CASSON: Your Honor, I just want to make sure
10 that I'm clear with your Honor.

11 Mr. Healy's name has come up as a person in a
12 position, the director of internal affairs. The
13 investigation that is at issue in this case was performed by
14 the Office of the Inspector General. There was a referral
15 from internal affairs to the Office of the Inspector General.
16 That is the context in which his name has come up, not as
17 someone who performed an investigation or developed facts
18 relative to the investigation.

19 THE COURT: Your statement is what it is, Mr.
20 Casson.

21 Tell me why under 26(a) he should not be permitted
22 to testify.

23 MR. CASSON: Because he was not, in fact,
24 disclosed.

25 THE COURT: Do you want to respond to that?

1 MR. HALLSTEN: As plaintiff's counsel has explained
2 to you, he is well aware of Mr. Healy's involvement in this
3 case --

4 THE COURT: Why don't you just give me a brief
5 written response, and you can put in there anything from the
6 transcript that you think fairly serves to put Mr. Casson on
7 notice.

8 MR. HALLSTEN: Could we get those to you by
9 Thursday, your Honor?

10 THE COURT: You can get it to me before trial.
11 We'll make a decision at the time.

12 MR. HALLSTEN: Thank you.

13 THE COURT: Okay. Zelda Whittler is likewise not
14 listed as a person with knowledge under Rule 26 disclosures
15 or interrogatories.

16 MR. HALLSTEN: Your Honor, in a similar fashion,
17 plaintiff was well aware that Ms. Whittler may have knowledge
18 of this case and attempted to take her deposition.
19 Defendants moved to quash the executive staff depositions in
20 this matter.

21 Mr. Casson only moved forward on -- let me -- as
22 the plaintiff noticed up the depositions of Sheriff Dart,
23 Brian Townes, Zelda Whittler, the defendants moved
24 collectively to quash the depositions of the executive staff.

25 Plaintiff moved forward with his motion and this

1 Court granted plaintiff the opportunity to serve special
2 interrogatories on Sheriff Dart --

3 THE COURT: Were those served?

4 MR. HALLSTEN: Yes.

5 THE COURT: Was Ms. Whittler also the subject of
6 special interrogatories?

7 MR. HALLSTEN: Mr. Casson did not move forward with
8 the -- did not move forward to submit -- did not seek leave
9 of this Court to submit Ms. Whittler with interrogatories.

10 THE COURT: Mr. Casson?

11 MR. CASSON: I was only -- I was granted leave to
12 file -- or, actually, not to file but to serve two
13 interrogatories -- or two sets, one to Mr. Townes and one to
14 Mr. Dart, and that was it.

15 THE COURT: He said you didn't ask to serve
16 interrogatories on Ms. Whittler.

17 MR. CASSON: I asked to take all of the
18 depositions. Your Honor granted me leave to -- one of their
19 requests for relief was they wanted, in lieu of the
20 depositions, to do the interrogatories.

21 THE COURT: Did you ask to submit interrogatories
22 to Ms. Whittler?

23 MR. CASSON: No, not interrogatories.

24 THE COURT: Okay. You will put that in writing as
25 well.

1 Plaintiff's motion in limine No. 2, to bar
2 examination of witnesses that calls for speculation, guess or
3 conjecture. I will deny that without prejudice for you to
4 raise it at the time of trial if you think a question fairly
5 calls for an answer that is not based on personal knowledge
6 of the witness or seeks to elicit an impermissible opinion
7 from a witness.

8 Plaintiff's motion in limine No. 3, to bar
9 introduction of documents not tendered in discovery. What do
10 you say to that?

11 MR. HALLSTEN: Well, your Honor, I don't know what
12 to say. The documents -- the motion doesn't identify --

13 MR. BOWMAN: Your Honor, I'm not quite sure what
14 Mr. Casson is specifically referring to as well. We pretty
15 comprehensively went through and Bates stamped almost every
16 single document that we tendered. There are maybe two or
17 three documents that have not been Bates stamped; I believe
18 that they have been discussed in discovery. But I'm not sure
19 if that's what Mr. Casson is referring to.

20 THE COURT: Mr. Casson, I'll deny the motion
21 without prejudice for you to raise at the time of trial an
22 objection to any document you think is barred because it
23 wasn't produced in discovery. Fair enough?

24 MR. CASSON: Fair enough, your Honor.

25 THE COURT: Okay. Anything else that we should

1 spread of record?

2 MR. CASSON: My No. 4, your Honor --

3 THE COURT: I don't have a 4. Do I have a 4?

4 MR. HALLSTEN: It appears to be the same -- it
5 appears to be Mr. Casson's motion to quash and motion to show
6 cause converted into a motion in limine. I believe the Court
7 has already addressed this.

8 THE COURT: I see it -- no, I don't -- I've got 1,
9 2 and 3. I don't have a 4.

10 MR. CASSON: Let me see if I have another copy,
11 your Honor.

12 (Brief pause.)

13 (Document tendered.)

14 THE COURT: Thank you.

15 You say in Paragraph 1 that the Court did not state
16 a date on which the interrogatories must be answered. Then
17 in Paragraph 7 you say that May 19th was the agreed upon
18 compliance date and that was ignored.

19 According to your own pleadings, Mr. Casson, there
20 was no order in effect that required production on May 19th.

21 MR. CASSON: That's correct, your Honor. I think
22 that's moot as to those interrogatories.

23 THE COURT: Well, in any event, there's no order in
24 effect. There was no order in effect. It was an agreement
25 that you had with the parties. It certainly wouldn't support

1 a contempt or a motion to compel. In fact, that material has
2 all been produced, has it not?

3 MR. HALLSTEN: Correct.

4 THE COURT: So this is denied as moot.

5 MR. CASSON: Your Honor, there are two more parts
6 to that request. There were -- which we moved to compel on
7 the request for production of documents that were not, in
8 fact, produced. They specifically relate to the --

9 THE COURT: Tell me what paragraph you're talking
10 about.

11 MR. CASSON: Unfortunately, I don't have a second
12 copy --

13 (Brief pause.)

14 MR. CASSON: Starting on Paragraphs 15, 16, 17.

15 THE COURT: Well, Paragraph 14 says the plaintiffs
16 are entitled to rely on a party's good faith compliance with
17 the order of court. There was no order.

18 MR. CASSON: Yes, that's correct.

19 THE COURT: Okay. So that theory is gone.

20 Why would there be a sanction for their conduct
21 that was not violative of a court order?

22 MR. CASSON: We're asking -- there should be, your
23 Honor, because at -- we've asked for -- we've been told that,
24 in fact, we would get a response. They were issued -- the
25 third and fourth requests for production were issued at the

1 same time --

2 THE COURT: Rule 37 permits me, in the appropriate
3 circumstance, to enter orders because of -- abuse of
4 discovery orders, does it not?

5 MR. CASSON: It does.

6 THE COURT: There was no order regarding the
7 compliance time.

8 MR. CASSON: That's correct, your Honor. When we
9 brought -- we brought the motion to compel, and technically I
10 guess it's still pending but --

11 THE COURT: I have denied that.

12 MR. CASSON: Okay.

13 THE COURT: But you recite that you had an
14 agreement that these would be produced on the 19th and that
15 he violated the agreement.

16 MR. CASSON: Correct.

17 THE COURT: Well, I don't have the authority to
18 sanction the parties' private agreements and their
19 violations. It wasn't embodied in a court order. Plus the
20 fact that you had it two days later.

21 When was the agreement? When were you to produce
22 those?

23 MR. HALLSTEN: May 19th. We put them in the mail
24 May 19th and the plaintiff has represented that she got those
25 on the 21st. I have no reason to dispute that

1 representation.

2 THE COURT: Do you recall an agreement that you
3 would physically produce those on the 19th?

4 MR. HALLSTEN: No. We did not make any specifics
5 -- a specific detailed agreement.

6 MR. CASSON: Your Honor, that's not the issue here.
7 The issue is --

8 THE COURT: What are you seeking to have me do and
9 what's the basis for my authority to do it?

10 MR. CASSON: Specifically the documents that are in
11 the request for production. They were never tendered on the
12 19th.

13 THE COURT: Is this the documents that I ordered
14 produced on May 4th?

15 MR. HALLSTEN: Yes.

16 THE COURT: There wasn't a time for them to be
17 produced ordered, Mr. Casson, by your own pleadings here.

18 MR. CASSON: They were issued pursuant -- I
19 understand there was no court order.

20 THE COURT: The motion is denied.

21 MR. HALLSTEN: Your Honor, at this time plaintiff
22 has listed on her may call witnesses Brian Townes and Sheriff
23 Dart. We had prepared something in writing. At this time
24 the defendants would move to exclude those two persons as
25 witnesses.

The answers to interrogatories that were provided demonstrate that they don't have any applicable knowledge in this case. Their answers to interrogatories are free to be used as exhibits, if necessary.

THE COURT: Mr. Casson?

MR. CASSON: I intend to call them to support those -- I certainly cannot use the interrogatory.

THE COURT: Off the record.

(Discussion had off the record.)

THE COURT: Anything further?

(No response.)

THE COURT: Okay.

(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ *Mary M. Hacker*

June 2, 2010

Mary M. Hacker
Official Court Reporter